APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

TONY CORTINAS, JR.	:	
Appellant	:	
vs.	:	Bankruptcy No. 79-463-A
PEOPLES SECURITY BANK OF MARYLAND ET AL.	:	CA No. 81-0300-A
Appellees	:	
	:	STIPULATION

Pursuant to Rule 10 (d) of the Federal Rules of Appellate Procedure, the parties, by counsel, stipulate as follows:

1. On January 16, 1979, a judgment in the amount of $4,140.52, with interest at eight percent (8%) from the date of judgment, plus fifteen percent (15%) attorney's fees and costs, was entered in the General District Court of Fairfax County, Virginia, against Antonio and Glenna L. Cortinas in favor of Peoples Security Bank of Maryland.

2. On March 19, 1979, the judgment was docketed with the Fairfax County Circuit

Court, creating a judgment lien against real property owned by Mr. and Mrs. Cortinas as tenants by the entireties.

3. On March 19, 1979, Antonio Cortinas was insolvent.

4. On May 3, 1979, Antonio Cortinas filed a Voluntary Petition under Chapter 7 of the Bankruptcy Act in the United States District Court for the Eastern District of Virginia, listing as exempt real property owned by himself and his wife as tenants by the entireties.

5. In September of 1979, during the course of the bankruptcy proceeding, the real property held as tenants by the entireties by Mr. and Mrs. Cortinas, subject to the judgment lien held by Peoples Security Bank of Maryland, was sold. At that time, a sum of money sufficient to satisfy the Bank's judgment was put into an escrow account held by the settlement attorney.

6. On February 2º, 1980, an Order of Abandonment of Unencumbered Property was

entered by the Court as to the property at issue, the trustee-in-bankruptcy having petitioned to abandon the property because it was held as tenants by the entireties by Mr. and Mrs. Cortinas, and was not an asset of the bankrupt's estate.

7. On June 2, 1980, Antonio Cortinas received his discharge in bankruptcy.

8. On or about June 23, 1980, Peoples Security Bank of Maryland received through its attorneys, Kohlhaas, Garnier & Webb, P.C., a certified check in the amount of $5,320.64, in full payment of the judgment debt of Mr. and Mrs. Cortinas. On or about June 26, 1980, the judgment lien was released as paid.

9. On December 30, 1980, Antonio Cortinas, by counsel, filed a petition in the Bankruptcy Court requesting that an Order be issued to Peoples Security Bank of Maryland, as well as to the Bank's attorneys, Kohlhaas, Garnier & Webb, P.C., and Donald C. Weinberg, Esq., to show cause why the should not each

be held in contempt for accepting a check in payment of the judgment debt owed by Mr. and Mrs. Cortinas to Peoples Security Bank, and for thereafter releasing the judgment lien against real property of Mr. and Mrs. Cortinas.

10. On March 24, 1981, the Bankruptcy Court held a hearing on the petition. Counsel for Mr. Cortinas argued that the judicial lien of Peoples Security Bank against the property of Mr. and Mrs. Cortinas was void by virtue of Section 67 a. of the Bankruptcy Act. Counsel requested the Court to issue an Order for the return of the monies paid Peoples Security Bank to Mr. Cortinas, as his interest might appear. After hearing the argument of the parties, the Court determined that the lien in question was against entireties property, which, under the Bankruptcy Act, did not come into the bankruptcy estate for the benefit of creditors. The Court ruled that the property and the lien against it were therefore

unaffected by the bankruptcy proceedings.

11. On March 24, 1981, at the end of the hearing, the Court therefore denied Mr. Cortinas' petition to have the lien declared void under the Bankruptcy Act and to have the lien holder and its attorneys held in contempt for accepting payment and releasing the lien.

SEEN AND AGREED:

/s/ John W. Thyden	/s/ Wendy Manz
John W. Thyden, Esq.	Wendy Manz, Esq.
Counsel for Appellant	Counsel for Appellees

APPENDIX B

cc: Thyden
Manz

VIRGINIA:

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

IN RE: TONY CORTINAS, JR. : Bankruptcy No. 79-463-A

ORDER

THIS DAY CAME the parties hereto, by counsel, upon the Motion of the Petitioner, Tony Cortinas, Jr. for the entry of an Order holding Peoples Security Bank, Kohlhaas, Garnier & Webb, and Donald C. Weinberb, Esquire, in contempt of this Court for proceeding on a dischargeable debt in violation of a Court Order of Discharge. The Court, having heard the arguments of counsel and being of the opinion that the Motion ought to be denied, it is, therefore, hereby,

ADJUDGED, ORDERED and DECREED that the above Motion of the Petitioner that Peoples Security Bank, Kohlhaas, Garnier & Webb,

and Donald C. Weinberg, Esquire be held in contempt of this Court for proceeding on a dischargable debt, be, and it hereby is, denied.

ENTERED this 24th day of March, 1981.

/s/ Martin V.B. Bostetter, Jr.
Martin V.C. Bostetter, Jr.
Judge

A TRUE COPY TESTE
Howard K. Glascock, Clerk
By /s/ Deputy Clerk

WE ASK FOR THIS:

ZUCKERMAN, SPAEDER, TAYLOR & KOLKER

BY: /s/ Wendy Manz
1800 M. Street, N.W.
Suite 375-North
Washington, D.C. 20036

SEEN:

/s/ John W. Thyden
John W. Thyden
Box 399
6901 Old Keene Mill Road
Springfield, Virginia 22150

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

FILED
AUG 12 1981
Clerk U.S.
District Court
Alexandria,
Virginia

IN RE:	
TONY CORTINAS, JR.,	Bankruptcy No. 79-463-A
Debtor	
TONY CORTINAS, JR.,	
Appellant,	
v.	
PEOPLES SECURITY BANK OF MARYLAND, et al.,	
Appellees	

ORDER

This matter having come before the court on an appeal from an order of the Bankruptcy Court, and, having considered the record and the arguments of counsel, it is

ORDERED that, pursuant to Rule 810 of the Rules of Bankruptcy, the order of the Bankruptcy Court dated March 24, 1981, denying the motion of appellant that the

appellees be held in contempt of court, is AFFIRMED.

Let the Clerk mail copies of this order and the accompanying Memorandum to counsel for the parties.

/s/ Richard L. Williams
United States District Judge

Date: August 12, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

IN RE:	)	
	)	
TONY CORTINAS, JR.,	)	Bankruptcy No. 79-463-A
	)	
Debtor.	)	FILED
	)	AUG 12 1981
TONY CORTINAS, JR.,	)	Clerk U.D. District Court
	)	
Appellant,	)	Alexandria, Virginia
	)	
v.	)	Civil Action No. 81-0300-A
	)	
PEOPLES SECURITY BANK OF MARYLAND et al.,	)	
	)	
Appellees.	)	

M E M O R A N D U M

This matter came before the bankruptcy court on a stipulation of facts entered into by the parties. This court adopts those facts in resolving this appeal from an order of the bankruptcy judge. In summary, the facts as set forth in the stipulation are:

1. Peoples Security Bank of Maryland (the Bank) obtained a judgment in the amount of $4, 140.52 with interest at eight percent from the date of judgment plus fifteen

percent attorney's fees and costs against Antonio and Glenna Cortinas. The judgment was obtained in the General District Court of Fairfax County, Virginia on January 16, 1979.

2. That judgment was docketed March 19, 1979 in the Fairfax County Circuit Court, thereby creating a lien against real property owned by Antonio and Glenna Cortinas (husband and wife) as tenants by the entireties.

3. On May 3, 1979, Antonio Cortinas filed a voluntary petition under Chapter 7 of the Bankruptcy Act.

4. In September, 1979, while the bankruptcy proceedings were still pending, the realty owned by Mr. and Mrs. Cortinas as tenants by the entireties was sold. This property was

subject to the judicial lien held by the Bank. An amount of money sufficient to satisfy the judgment was placed in escrow

by the settlement attorney.

5. An Order of Abandonment of Unencumbered Property was entered in the bankruptcy proceeding regarding the property at issue in the case at bar on February 29, 1980. The trustee petitioned to abandon the property because it was held by Mr. and Mrs. Cortinas as tenants by the entireties and thus was not an asset of the bankrupt's estate.

6. On June 2, 1980, Antonio Cortinas was discharged in bankruptcy.

7. On June 26, 1980 the Bank received through its attorneys, Kohlhass, Garnier & Webb, a certified check for $5,320.64 to pay the judgment debt. The lien was released as paid that same day.

As a result of that transaction, Antonio Cortinas filed a petition in the Bankruptcy court requesting that the court issue an order to the Bank and to its lawyers to show cause why they should not be held in contempt for accepting a check

in payment of the judgment debt, knowing that the debts of Antonio Cortinas had been discharged in bankruptcy. After a hearing on the petition, the court refused to hold the respondents in contempt, deciding that the property involved, being held by Mr. and Mrs. Cortinas as tenants by the entireties, did not come into the bankrupt's estate for the benefit of the creditors and, thus, the property was unaffected by the bankruptcy proceedings.

Cortinas has appealed to this court, claiming that the bankruptcy judge erred by refusing to exercise jurisdiction over the issue, and in deciding that this debt of the bankrupt was not discharged by the June 2 order.

The first issue deserves little discussion. After reading the record in the bankruptcy court it is apparrent that the

judge did, in fact, exercise jurisdiction to determine the issue presented to him,

namely, whether the debt involved was discharged in bankruptcy and, if so, whether the respondents should be held in contempt. Furthermore, the bankruptcy judge was correct in so exercising jurisdiction. 11 U.S.C. § 11 (a).[1]

This court also agrees with the bankruptcy judge that the debt collected by the Bank was not discharged in the bankruptcy proceeding of appellant. The appellant relies on § 67 (a) of the Bankruptcy Act, 11 U.S.C. § 107 (a), which provides, in pertinent part:

> Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable filing of a petition initiating a proceeding under this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent. . . . .

There is no dispute among the parties that

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1. This case is not governed by the 1978 Bankruptcy Act, the proceedings having been initiated before the October 1, 1979 effective date of that act. See §§ 402-03 of Pub. L. 95-598, Title IV, Nov. 6, 1978, 92 Stat. 2682-83.

Cortinas was insolvent at the time the lien was perfected by the docketing of the judgment in the Fairfax County Circuit Court. Nor can there be any dispute that the lien was obtained within four months of the filing of the appellant's petition initiating a bankruptcy proceeding. Where the parties differ is on the question of whether the property involved is "property of a person" as that phrase is used in the act. The bankruptcy judge determined that it was not and this court agrees with that determination.

The bankruptcy judge relied on Phillips v. Krakower, 46 F. 2d 764 (4th Cir. 1931), which involved a petition to delay the final discharge in bankruptcy of an individual to allow a creditor of the bankrupt and his wife to reduce her claim to a judgment and satisfy the judgment from the property held by the couple as tenants by the entireties. The Fourth Circuit held that the delay was proper to avoid what the court

called a "legal fraud." This "legal fraud" could occur as

p. 4

follows:

> Where . . . husband and wife execute a joint note, the estate by entireties can be subjected to judgment thereon on the note of one of the spouses to be discharged in bankruptcy, a judgment on the note against the other cannot be collected out of the property during the lifetime of the first.

Id. at 765. The court went on to say, in a somewhat confusing passage:

> And so, although the bankruptcy proceeding has brought no interest in the estate by entireties into court for the benefit of the creditors of Phillips, his discharge in bankruptcy will remove that entire property beyond the reach of creditors entitled to subject it to their claims.

Id.

This passage clearly indicates that the property held by the entireties is not "property of a person" as that phrase is used in the statute. But it would also seem to indicate that despite this, the liability of the appellant for satisfaction of the lien is extinguished. This, however,

is not the law as this court understands it.

A discharge in bankruptcy "releases the bankrupt's personal liability only." 1A Collier, Bankruptcy § 17.29.

> It follows, therefore, that a valid lien on property of the bankrupt existing at the time of the adjudication in bankruptcy, which is not avoided by the Bankruptcy Act, may be enforced notwithstanding the discharge of the bankrupt.

Id.

The Fourth Circuit has ruled in accordance with the above analysis. In the case of In Re Bishop, the court wrote"

> [B]ecause discharge affects only a bankrupt's personal liability, if [the creditor] . . . could obtain and record a judgment against Mr. and Mrs. Bishop before Mrs. Bishop's discharge, the lien would not be released by her subsequent discharge.

In Re Bishop, 482 F. 2d 381, 383 (4th Cir. 1973). That is the situation at bar. The judgment was obtained and the lien attached before the discharge. Section 67 (a) did not void the lien since the property was not "property of a person."

The lien being valid, and the debt not discharged, the bankruptcy judge correctly ruled that the appellant's petition was without merit and refused to hold the bank and its attorneys in contempt.

In accordance with this memorandum, therefore, an order will issue affirming the decision of the bankruptcy judge.

/s/ Richard L. Williams
United States District Judge

Date: Aug 12, 1981

APPENDIX D

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 81-1880

Tony Cortinas, Jr., Appellant,

-v-

Peoples Security Bank of Maryland, Kohlahaas, Garnier & Webb, Donald C. Weinberg (Esq.), Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Richard L. Williams, District Judge.

Argued: March 3, 1982 Decided: March 24, 1982

Before BURZNER, RUSSELL, and MURNAGHAN, Circuit Judges

John W. Thyden for appellant; Wendy Manz (Zuckerman, Spader, Taylow & Kolker on brief) for appellees.

PER CURIAM:

Tony Cortinas, Jr., appeals from a district court order affirming the decision of the bankruptcy court and upholding the validity of a lien on property owned by Cortinas and his wife as tenants by the entirety. For reasons adequately stated in the opinion of the district court, we affirm.

APPENDIX E

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 81-1880

Tony Cortinas, Jr., Appellant,

versus

Peoples Security Bank of Maryland
Kohlahaas, Garnier & Webb,
Donald C. Weinberg (esq.), Appellees.

O R D E R

Upon consideration of the appellant's petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Butzner for a panel consisting of Judge Butzner, Judge Russell, and Judge Murnaghan.

For the Court

/s/ William K. Slate, II

FILED

Apr 26 1982

U.S. Court of Appeals

Fourth Circuit